



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-GAF-P4/06-28

September 7, 2006

Petition of Fitchburg Gas and Electric Light Company for approval of a change in the method by which the Company recovers its gas and electric bad debt costs.

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FOR: FITCHBURG GAS AND ELECTRIC LIGHT
COMPANY
Petitioner

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Commenter

I. INTRODUCTION

On December 15, 2005, Fitchburg Gas and Electric Light Company d/b/a Unitil (“Fitchburg” or the “Company”) filed with the Department of Telecommunications and Energy (“Department”) a request for dollar-for-dollar recovery of all gas cost-related bad debt on a going-forward basis effective January 1, 2006,¹ as well as recovery of all gas cost-related bad debt for calendar year 2005 (“Gas Filing”). This request was docketed as D.T.E. 05-GAF-P4. On March 7, 2006, the Company requested recovery of actual electric supply-related bad debt on a going-forward basis as well as recovery of actual electric supply-related bad debt for calendar year 2005 (“Electric Filing”). This request was docketed as D.T.E. 06-28. Because of the similarity of the issues raised as well as the need for the Department to review both matters simultaneously for consistency, the dockets were consolidated as D.T.E. 05-GAF-P4/06-28 on April 7, 2006.

On February 3, 2006, the Department issued a Request for Comment relating to the Gas Filing, and on March 21, 2006, the Department issued a Request for Comment relating to the Electric Filing. The Company and the Attorney General of the Commonwealth (“Attorney General”) submitted comments on February 21, 2006, and April 7, 2006, and the Company

¹ On December 22, 2005, the Department approved Fitchburg’s modification of its gas tariff to revise the definition of bad debt and the bad debt cost factor to permit actual recovery of gas cost-related bad debt on a going-forward basis as consistent with the Department’s determination in Bay State Gas Company, D.T.E. 05-27 (2005) (Tariff M.D.T.E. No. 123, Stamp Approval (2005)). Thus, in this Order, the Department only addresses the appropriateness of permitting recovery of actual electric supply-related bad debt on a going-forward basis and recovery of under-recovered gas cost-related and electric supply-related bad debt for calendar year 2005.

submitted reply comments on February 24, 2006. Fitchburg replied to Department information requests on May 3, 2006, and May 19, 2006. The Department did not hold a public or evidentiary hearing. The evidentiary record consists of nine exhibits.²

II. DESCRIPTION OF FITCHBURG'S PROPOSAL

Fitchburg proposes recovering actual uncollected bad debt costs associated with electric supply through its default service tariff on a going-forward basis effective January 1, 2006 (Electric Filing at 1). In addition, the Company proposes recovering actual unrecovered gas cost-related bad debt through its cost of gas adjustment clause ("CGAC") filing and recovering actual unrecovered electric supply-related bad debt through its default service tariff, both for calendar year 2005 (Gas Filing at 2; Electric Filing at 1). Fitchburg states that the recovery of its actual electric supply-related bad debt on a going-forward basis as well as recovery of its under-recovered gas cost-related and electric supply-related bad debt for calendar year 2005 is consistent with the Department's decisions in Bay State Gas Company, D.T.E. 05-27 (2005) ("Bay State") and KeySpan Energy Delivery New England, D.T.E. 05-66 (2005) ("KeySpan").

III. SUMMARY OF COMMENTS

A. Fitchburg

Fitchburg asserts that it should be permitted to recover actual electric supply-related bad debt on a going-forward basis, as well as \$164,470 in under-recovered gas cost-related bad

² The Department, on its own motion, moves the Company's responses to information requests DTE-1-1 through DTE-1-6 and DTE-2-1 through DTE-2-3 into the evidentiary record in this proceeding.

debt and \$83,527 in under-recovered electric supply-related bad debt, both for calendar year 2005 (Gas Filing at 3; Electric Filing at 2-3). The Company notes that it currently applies the bad debt recovery method established by the Department in Fitchburg's last rate case, Fitchburg Gas and Electric Light Company, D.T.E. 02-24/25 (2003) ("Fitchburg Rate Case") (see e.g., Gas Filing at 2-3). Fitchburg contends that the Department's decision in Fitchburg Rate Case was based on the expectation that customers would migrate to competitive suppliers who would bear any associated bad debt (see e.g., Gas Filing at 2-3; Fitchburg February Comments at 1-2; see also Fitchburg Rate Case at 171-172). According to the Company, migration to third-party suppliers has not occurred, and Fitchburg's bad debt costs have been under-recovered each year (see e.g., Gas Filing at 2-3; Fitchburg February Comments at 2). Fitchburg also asserts that the level of bad debt established in Fitchburg Rate Case tends to underestimate the Company's true level of bad debt expense because it represents an annualization of the Company's write-offs booked in January through November excluding write-offs during December (see e.g., Gas Filing at 3 n.1).³

In addition, Fitchburg asserts that, like other local distribution companies ("LDCs"), wholesale power costs remain out of its control and it is faced with a market of increasing prices and price volatility (Fitchburg February Comments at 6; Fitchburg April Comments at 4-5). The Company contends that while it has prudently managed its power services and

³ Fitchburg asserts that the Department removed December from the test year due to higher commodity costs and the winter shut-off moratorium which was characterized as an extraordinary event (Gas Filing at 3 n.1). Fitchburg contends that commodity costs have continued to increase and requests for voluntary extension of the shut-off period have occurred with some regularity, with Fitchburg participating each time (id.).

kept its bad debt costs within reasonable levels, those costs exceed the representative level of uncollectible expense that is included in base rates (Fitchburg February Comments at 6; Fitchburg April Comments at 5).

The Company also contends that the proposal to recover its under-recovered bad debt is consistent with the method of recovering bad debt expense recently approved by the Department (see e.g., Gas Filing at 1; Electric Filing at 3; see also Bay State at 183-184). Fitchburg argues that the Department has recognized an LDC's constitutionally protected right to earn a reasonable return (see e.g., Fitchburg February Comments at 5, citing KeySpan at 16). Specifically, Fitchburg asserts that the Department permitted Boston Gas Company ("Boston Gas") to recover under-recovered gas cost-related bad debt expense because the method put in place in Boston Gas' last rate case effectively denied its constitutionally protected opportunity to earn a reasonable return to recover costs which were largely beyond Boston Gas' control and necessary to meet its service obligations (see e.g., Gas Filing at 4, citing KeySpan at 16; see also Exh. DTE-1-5). Fitchburg contends that it is entitled to the same treatment (see e.g., Gas Filing at 4-6).

Fitchburg also argues that its proposal to recover under-recovered gas cost-related and electric supply-related bad debt for calendar year 2005 does not violate the principle of retroactive ratemaking and is consistent with the purpose and function of the default service tariff and CGAC as reconciling mechanisms because the limitations on retroactive ratemaking are applicable to base rate changes and do not apply to reconciling mechanisms (see e.g.,

Fitchburg February Comments at 3-7, citing Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625 (2004) (“Fitchburg”).

B. Attorney General

The Attorney General asserts that Fitchburg’s reliance on Fitchburg and KeySpan is misplaced (Attorney General February Comments at 2; Attorney General April Comments at 2). Specifically, the Attorney General argues that in Fitchburg, the Department did not modify a calculation, but rather used its regulatory power to correct errors in a calculation (Attorney General February Comments at 2; Attorney General April Comments at 2). In KeySpan, the adjustment for bad debt expense was permitted as an exogenous cost, and the Attorney General asserts the current situation is not analogous because Fitchburg’s rate plan does not contain an exogenous cost provision (Attorney General February Comments at 2; Attorney General April Comments at 2).

In addition, the Attorney General notes that during a rate proceeding, the Department considers many costs and factors to balance shareholder and customer interests and arrive at an appropriate return (Attorney General February Comments at 2; Attorney General April Comments at 2). The Attorney General asserts that, in this instance, the Company is inappropriately asking the Department to consider just one cost in isolation on a retroactive basis (Attorney General February Comments at 2; Attorney General April Comments at 2).

The Attorney General also contends that Fitchburg’s request to change its bad debt expense calculation constitutes a change in the formula of a reconciling tariff that increases

rates and thus must be subject to a hearing before the Department (Attorney General February Comments at 1; Attorney General April Comments at 1).

IV. ANALYSIS AND FINDINGS

A. Recovery of Electric Supply-Related Bad Debt On a Going-Forward Basis

The first issue to address is whether Fitchburg may recover actual electric supply-related bad debt on a going-forward basis. The Department has previously noted that, in a market characterized by price volatility, fixing the total amount of uncollectible expense that could be recovered as part of a base rate proceeding may have a significant impact on a company's earnings and could violate the Department's rate structure goal of earnings stability. Bay State at 183. Notably, the Department found that the recovery method for gas cost-related bad debt expense established in Fitchburg Rate Case and affirmed in Boston Gas Company, D.T.E. 03-40 (2003), no longer achieves the Department's rate structure goal of earnings stability. Bay State at 183-184. Hence, the Department determined that on a going-forward basis, it is appropriate to permit recovery of increases in supply-related bad debt expenses. Bay State at 185-186.

The Attorney General asserts that any change to the manner in which Fitchburg's bad debt expenses are recovered requires public notice and hearing targeted directly to customers in the Company's service territory (Attorney General February Comments at 1-2; Attorney General April Comments at 1-2). We disagree. All LDCs were put on notice regarding the Bay State proceeding, and the public and interested persons had the opportunity to participate in that proceeding and voice concerns. In fact, the Attorney General participated in Bay State

by issuing discovery, attending the evidentiary hearings, and submitting briefs. Further, the Department has in the past issued findings within a single proceeding that ultimately impact all LDCs. See e.g., Colonial Gas Company, D.T.E. 97-112 (1999) (recovery of lost margins resulting from demand side management programs); NSTAR Electric and Gas Company, D.T.E. 03-47-A (2003) (“NSTAR”) (recovery of costs related to employees’ pension and post-retirement benefits). Therefore, the determination in Bay State that LDCs may now recover bad debt expense on a going-forward basis was in compliance with Department regulations and policy.

As such, consistent with its decision in Bay State, the Department finds that Fitchburg may recover actual electric supply-related bad debt on a going-forward basis effective December 1, 2005.⁴ Accordingly, Fitchburg is directed to submit for review and approval a default service tariff that incorporates appropriate revisions related to bad debt costs.

B. Recovery of Gas Cost-Related and Electric Supply-Related Bad Debt for Calendar Year 2005

The method used by LDCs to recover bad debt is established by the Department in a company’s rate case proceeding, and the method does not change until a company submits another base rate filing. See e.g. Fitchburg Rate Case, Bay State. Recently, the Department noted that LDCs are faced with unprecedented increases in gas commodity prices which may impact the bad debt expense. KeySpan at 11-12. We stated that companies that are under a rate freeze or a performance based regulation (“PBR”) plan can propose recovery of

⁴ The Department issued Bay State on November 30, 2005; hence, Fitchburg may recover its electric supply-related bad debt prospectively effective December 1, 2005.

exogenous costs outside of the PBR mechanism. Id. at 12 n. 11, citing Colonial Gas Company, D.T.E. 00-73 (2001); Colonial Gas Company, D.T.E. 01-73 (2002); Colonial Gas Company, D.T.E. 03-90 (2004). As such, the Department permitted Boston Gas to propose exogenous adjustments in its annual PBR filing. KeySpan at 11. However, unlike Boston Gas, Fitchburg does not have a rate freeze and does not have a PBR plan in place⁵ and therefore has no exogenous cost provision. If, in fact, the level of bad debt expense has had an impact on Fitchburg's earnings, the Company has had the opportunity to file a base distribution rate case and propose a different mechanism for the recovery of its bad debt.

With respect to the Company's argument that its proposal does not violate the principle of retroactive ratemaking and is consistent with the purpose and function of the CGAC and the default service tariff, the Department is unpersuaded by Fitchburg's cited cases. For example, in Fitchburg, the Supreme Judicial Court affirmed the Department's decision to require refunds of certain costs that had been double recovered through both the base rate and the CGAC over an eleven-year period. Fitchburg at 639. The Court found that, rather than retroactive ratemaking, the Court's decision constituted permissible corrective action in response to an error in the calculation of the CGAC. Id. In the matter at hand, there has not been an error in calculation. Instead, the Department has established in Bay State a new policy to be used by

⁵ While Fitchburg filed a PBR plan on April 16, 2002, for reasons of administrative efficiency, the Department declined to review it. Specifically, the Department determined to first review a PBR plan submitted by a large national company that had the resources to provide necessary studies (see Fitchburg Gas and Electric Light Company, D.T.E. 02-23, at 4 (2003)). Since that time, the Company has not filed a PBR plan.

LDCs in recovering cost-related bad debt expense on a going-forward basis. The other cases cited as support by Fitchburg involved the establishment of a new reconciling mechanism where none had previously been in place (see e.g., Electric Filing at 4-6, citing NSTAR at 48; Investigation to Increase Participate Rate for Discounted Utility Services, D.T.E. 01-106-C (2005)). In Bay State, the Department did not establish a reconciling mechanism since there was already one in place. Instead, the Department simply revised the amount of bad debt that may be recovered on a going-forward basis.

Last, Fitchburg correctly states that the prohibition on retroactive ratemaking applies only to base rate changes. Although bad debt costs are collected through the CGAC for gas operations and through the Basic Service charge for electric operations, both reconciling mechanisms, the method for establishing the level of bad debt costs permitted to be recovered through rates was determined in a base rate proceeding, Fitchburg Rate Case at 168-173. In other words, the disallowance of retroactive ratemaking applies to the method for establishing the level of bad debt costs permitted to be recovered through rates. Therefore, the reconciliation of bad debt costs is limited to the level permitted under the method in effect at that time. Prior to our issuance of Bay State, the method in effect was the method approved in Fitchburg Rate Case. In Fitchburg Rate Case, we denied the Company's proposal to recover dollar-for-dollar production-related bad debt costs. Fitchburg Rate Case at 171-172. Hence, the Department finds that permitting Fitchburg to recover under-recovered electric supply-related and gas cost-related bad debt for the period from January 1, 2005, through November 30, 2005, would constitute retroactive ratemaking and is thus impermissible.

V. ORDER

Accordingly, after due notice and consideration, it is hereby

ORDERED: That the recovery by Fitchburg Gas and Electric Light Company of gas cost-related and electric supply-related bad debt for January 2005 through November 2005 is hereby DENIED; and it is

FURTHER ORDERED: That the recovery by Fitchburg Gas and Electric Light Company of electric supply-related bad debt on a going-forward basis effective December 1, 2005, is hereby APPROVED; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company shall submit for review and approval a revised default service tariff; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company comply with any and all other directives contained in this Order.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.